



Weekly Report for December 30, 2016

GOVERNMENT CONTRACTS

Submission for Office of Management and Budget Review; Payment of Subcontractors

On January 20, 2016, the Department of Defense, Government Accountability Office, and National Aeronautic and Space Administration proposed a rule to amend the Federal Acquisition Regulation (“FAR”) Case 2014-004, Payment of Subcontractors, requiring contractors to notify the contracting officer in writing if the contractor pays a reduced price to a small business subcontractor, or if the subcontractor’s payment to a small business contractor is more than 90 days past due in accordance with the Small Business Administration’s (“SBA”) final rule implementing section 1334 of the Small Business Jobs Act of 2010. Two comments were received on the information collection stating that the FAR Council (1) underestimated the implementation burden on commercial item and COTS item contractors; (2) underestimated the reporting time of only two hours per respondent; and (3) seeks additional information about the burden on contractors before a determination is made to apply the payment of subcontractor requirements to commercial item acquisitions since the Small Business Jobs Act of 2010 does not specifically require that the subcontractor payment clause apply to commercial contracts. Since this is a new rule without an empirical frame of reference, the public reporting burden is reviewed every three years and can be adjusted as necessary. Public comments are invited on (1) whether this collection of information is necessary for the proper performance of functions of the FAR and whether it will have a practical utility; (2) whether the public burden estimate of this collection of information is accurate, and based on valid assumptions and methodology; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways in which to minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology. Comments are due on, or before, January 26, 2017, [81 Fed. Reg. 95141](#).

Equal Employment Opportunity Commission: Availability of Records

The Equal Employment Opportunity Commission proposes to revise its Freedom of Information Act (“FOIA”) regulations in order to implement the substantive and procedural changes to the FOIA identified in the FOIA Improvement Act of 2016 (“Act”) and update two district offices’ addresses and the Office of Legal Counsel’s fax number.

In order to assist agencies and encourage consistency in FOIA practices across the government, the Department of Justice, Office of Information Policy (“OIP”), created a FOIA template for agencies to use as agencies publish and update their regulations. The template, which is located [here](#), provides sample regulation language. The proposed language contained in these revised FOIA regulations utilizes the language provided in the Act or contained in OIP's template. This interim final rule is effective on December 29, 2016. Comments are due on, or before, January 30, 2017, [81 Fed. Reg. 95869](#).

Office of Personnel Management: Access to Federal Employees Health Benefits for Employees of Certain Indian Tribal Employers

The Office of Personnel Management is issuing a final rule to extend coverage, rights, and benefits under the Federal Employees Health Benefits (“FEHB”) Program to certain employees of certain Indian Tribal employers. Section 10221 of the Patient Protection and Affordable Care Act incorporated, amended, and enacted section 409 of the Indian Health Care Improvement Act (“IHCA”). Under section 409 of the IHCA, an Indian Tribe or Tribal organization carrying out programs under the Indian Self-Determination and Education Assistance Act, or an urban Indian organization carrying out programs under Title V of IHCA, is entitled to purchase coverage, rights, and benefits under the FEHB Program for their employees. Tribal employers and Tribal employees will be responsible for the full cost of benefits, plus an administrative fee. The final rule is effective February 27, 2017, [81 Fed. Reg. 95397](#).

SMALL BUSINESS ADMINISTRATION

Announcement of InnovateHER: Innovating for Women Business Challenge 2017

The SBA is conducting the third year of the InnovateHER: Innovating for Women Challenge (“the Challenge”), pursuant to the America Competes Act, for entrepreneurs to create a product or service that has a measurable impact on the lives of women and families, the potential for commercialization, and fills a need in the marketplace. The Challenge launched on December 29, 2016. The initial round of the Challenge will take the form of local competitions that will be run across the country beginning December 29, 2016, and ending no later than April 29, 2017. The host organizations running the local competitions must select and submit one winner from each local competition to SBA, along with a nomination package, no later than May 12, 2017. SBA will then select up to ten finalists. The top three winners will be announced no later than July 27, 2017, following a live pitch competition, [81 Fed. Reg. 96157](#).

Announcement of the Aspire Challenge - An Agency Prize Competition

The Aspire Challenge is a prize competition conducted under the America Competes Act. The objective of the prizes is to spur the development and provision of innovative entrepreneurial development and access to capital resources for formerly incarcerated individuals or those who are non-violent ex-offenders. Through the design and delivery of intensive entrepreneurial education and increased access to micro-loans, the Aspire Challenge will serve as a catalyst to leverage business formation as a tool for economic

mobility and self-employment for the formerly incarcerated. This competition is designed to award prizes to entrepreneurial support organizations that propose innovative and sustainable solutions to equipping the formerly incarcerated with the education and technical assistance they need to start and grow a business. The submission period for entries will begin on December 29, 2016 and close on February 13, 2017. SBA anticipates that winners will be announced no later than March 14, 2017, [81 Fed. Reg. 96155](#).

Small Business Investment Companies: Passive Business Expansion and Technical Clarifications

The SBA is revising the regulations for the Small Business Investment Company ("SBIC") program to expand permitted investments in passive businesses and provide further clarification with regard to investments in such businesses. SBICs are generally prohibited from investing in passive businesses under the Small Business Investment Act of 1958, as amended. SBIC program regulations provide for two exceptions that allow an SBIC to structure an investment utilizing a passive small business as a pass-through. The first exception provides conditions under which an SBIC may structure an investment through up to two levels of passive entities to make an investment in a non-passive business that is a subsidiary of the passive business directly financed by the SBIC. The second exception, prior to this final rule, enabled a partnership SBIC, with SBA's prior approval, to provide financing to a small business through a passive, wholly-owned C corporation (commonly known as a blocker corporation), but only if a direct financing would cause the SBIC's investors to incur Unrelated Business Taxable Income. This final rule clarifies several aspects of the first exception and in the second exception eliminates the prior approval requirement and expands the purposes for which a blocker corporation may be formed. The final rule also adds new reporting and other requirements for passive investments to help protect SBA's financial interests, ensures adequate oversight, and makes minor technical amendments. Finally, this rule makes a conforming change to the regulations regarding the amount of leverage available to SBICs under common control. This change is necessary for consistency with the Consolidated Appropriations Act, 2016, which increased the maximum amount of such leverage to \$350 million. The final rule is effective January 27, 2017, [81 Fed. Reg. 95419](#).

Small Business Mentor-Protégé Programs; Correction

On October 19, 2016, the SBA issued a correction pertaining to 8(a) joint venture profits, [81 Fed. Reg. 71981](#). As SBA explained, due to the change made to Sec. 121.103(h), which eliminated the ability of a joint venture to be populated with individuals intended to perform contracts awarded to the joint venture, a conforming correction was needed to Sec. 124.513(c), which references populated joint ventures. Specifically, Sec. 124.513(c)(4) provided that in the case of a populated separate legal entity joint venture, 8(a) participant(s) must receive profits from the joint venture commensurate with their ownership interests in the joint venture. Because SBA eliminated populated joint ventures, that provision was superfluous and was deleted. SBA's 8(a) joint venture rule now states that the 8(a) participant(s) in a joint venture must receive profits from the joint venture commensurate with the work performed by

the 8(a) participant(s), 13 CFR 124.513(c)(4). This change was necessary because under the mentor-protégé program, a protégé may perform as little as 40% of the total work performed by the joint venture in aggregate. It would not make sense to require a firm to receive 51% of the profits for doing only 40% of the work. The same language that SBA corrected in the 8(a) regulations is currently in place for joint ventures under all small mentor-protégé, Service-Disabled Veteran-Owned, Women-Owned and HUBZone small business programs. SBA's intent was for profits to be commensurate with the work performed by each member of the joint venture. These rules currently state that in the case of a separate legal entity, the firm must receive profits commensurate with their ownership interests in the joint venture, which is contrary to SBA's intent. Consequently, SBA is correcting Sec. Sec. 125.8(b)(2)(iv), 125.18(b)(2)(iv), 126.616(c)(4) and 127.506(c)(4) to make the rules consistent with 124.513(c)(4) and across all programs, [81 Fed. Reg. 94941](#).